

REMARKS

In the Office Action¹, the Examiner objected to the drawings; objected to the specification; objected to claim 2; provisionally rejected claims 1, 12, and 13 on the grounds of nonstatutory obviousness-type double patenting over claim 6 of co-pending U.S. Patent Application Publication no. 2005/0129112 (the '112 application) in view of U.S. Patent No. 7,266,148² to Kim ("Kim"); rejected claims 1-11 and 13 under 35 U.S.C. § 112, second paragraph; rejected claim 12 under 35 U.S.C. § 101; rejected claims 1, 2, 9, 12, and 13 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0034246 to Yamada et al. ("Yamada"); and indicated that claim 3 recites allowable subject matter.

By this Amendment, Applicant amends the drawings; amends the specification; cancels claims 3 and 12 without prejudice or disclaimer; amends claims 1, 2, 4-11, and 13; and adds claim 14. Claims 1-20 are now pending, and the objection and rejections of claims 3 and 12 are rendered moot by the cancellation of these claims.

Applicant amends the drawings to replace "32" with "36" in Figure 3. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the objection to the drawings.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

² On page 4 of the Office Action the Examiner indicates that claims 1, 12, and 13 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claim 6 of co-pending U.S. Patent Application no. 10/989,709 in view of U.S. Patent No. 7,266,148. However, the Office Action appears to refer to *Yamada* and Figures of *Yamada* in the comments setting forth the rejection. Accordingly, the grounds of nonstatutory obviousness-type double patenting rejection are not clear. In order to advance prosecution, however, Applicant assumes that the Examiner's rejection is referring to *Kim*, and requests clarification if the assumption is incorrect.

Applicant has amended the title to read: "METHOD AND APPARATUS FOR DETERMINING A QUANTIZATION SCALE OF ENCODED DATA." The new title is indicative of the invention to which the claims are directed, and Applicant respectfully requests withdrawal of the objection to the specification.

Applicant has amended claim 2 to remove "saod." Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the objection to claim 2.

Applicant respectfully traverses the provisional non-statutory obviousness-type double patenting rejection of claims 1, 12, and 13. The cancellation of claim 12, renders moot the provisional non-statutory obviousness-type double patenting rejection of this claim.

Further, with respect to claims 1 and 13, Applicant asserts that no actual double-patenting circumstance can arise until a patent issues from the present application or the '112 application. Moreover, as amended, claims 1 and 13 include new features that are not recited in claim 6 of the '112 application nor disclosed in *Kim*. For example, neither claim 6 of the '112 application nor *Kim* teaches, or even suggests, the allowable features including, for example "an indicator generation circuit for generating, based on the encoded data, indicator data specifying an amount . . . for decoding" or "a target calculation circuit for calculating a target bit rate indicating a target value of the bit rate based on the indicator data . . . the bit rate to approach a value based on the target bit rate," as recited in claim 1, and similarly recited in claim 13.

Accordingly, claims 1 and 13 are in condition for allowance, and Applicant respectfully requests the Examiner to withdraw the provisional non-statutory obviousness-type double patenting rejection of claims 1, 12, and 13.

Applicant respectfully traverses the rejection of claims 1, 2, 4-11, and 13 under 35 U.S.C. § 112 and asserts that the claims, as amended, meets the requirements of 35 U.S.C. § 112. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1, 2, 4-11, and 13 under 35 U.S.C. § 112.

The 35 U.S.C § 101 rejection of claim 12 is rendered by moot by the cancellation of claim 12.

Independent claim 1 has been amended to include allowable subject matter from claim 3. Independent claim 13, while of different scope than claim 1, has also been amended to include allowable subject matter from claim 3. New independent claim 14 also includes allowable subject matter. The remaining claims depend from independent claim 1, and are therefore allowable based on their dependency.

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: April 23, 2009

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